

the force account, they would be liable; but, if the Act had no application, probably the account could not be taken in this proceeding—which was a summary one under the Act.

The question whether the Provincial Legislature has jurisdiction to create a lien effective as against a Dominion railway was determined adversely to the plaintiff in *Crawford v. Tilden* (1907), 14 O.L.R. 572; but the plaintiffs in this action intended to take it to the Supreme Court of Canada, seeking to have that decision overruled.

The question of the constitutionality of the Act ought also to be disposed of as a preliminary issue if, as the plaintiffs contended, all questions between the parties may be determined under the Act, even though in the ultimate finding there is not any valid lien. In *Kendler v. Bernstock* (1915), 33 O.L.R. 351, the constitutional aspect of legislation which conferred upon a Referee jurisdiction which would ordinarily belong to a Judge, was not considered.

These matters might be disposed of entirely as questions of law; but counsel for the plaintiffs thought that light might be thrown on them by evidence; and he should not be precluded from attempting to convince a trial Judge.

Order made directing that the two issues be separately tried before a Judge of the High Court Division, at a sittings for the trial of actions, and not before a Referee. Costs in the cause unless otherwise directed by the Judge at the trial.

MIDDLETON, J., IN CHAMBERS.

JUNE 19TH, 1916.

RE SUTHERLAND v. BEEMER.

*County Courts—Jurisdiction—Action for Refund of Money Paid for Article not Found to be as Represented—Refusal to Accept—Action in Contract or Tort—County Courts Act, sec. 22—Motion for Transfer of Action from County Court to Supreme Court of Ontario.*

Motion by the defendant to transfer the action from the County Court of the County of Oxford to the Supreme Court of Ontario—upon the theory that the action was beyond the jurisdiction of the County Court.

Joseph Montgomery, for the defendant.

T. H. Peine, for the plaintiff.

MIDDLETON, J., in a written opinion, said that the defendant sold a second-hand automobile to the plaintiff for \$775, which